



COMMISSIONER OF FINANCIAL REGULATION
DECLARATORY RULING



WILDCARD LENDING LIMIT

January 16, 2013

This Declaratory Ruling addresses state-chartered banks' lending limits.

Purpose

The Maryland Commissioner of Financial Regulation (“Commissioner”) issues this Wildcard Lending Limit Declaratory Ruling (“Ruling”) in response to Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, P.L. 111-203 (“Dodd-Frank”) and in conjunction with federal lending limit amendments adopted by the Office of the Comptroller of the Currency (“OCC”) pursuant to Dodd-Frank Section 610 (77 Fed. Reg. 37265, June 21, 2012). The Ruling also clarifies the State rules regarding lending limit election. With this Ruling, the Commissioner updates and replaces State Bank Commissioner Joseph R. Crouse’s declaratory ruling dated January 26, 1983 (“1983 Ruling”) and supersedes previous interpretations related to the legal lending limit election.

Background

Section 3-601 of the Financial Institutions Article of the Annotated Code of Maryland prescribes state-chartered banking institutions’ aggregate lending limit (“Maryland Limit”).

Pursuant to Section 5-504(b) of the Financial Institutions Article of the Annotated Code of Maryland (“Wildcard”), the Commissioner may grant approval to state-chartered banking institutions to engage in any additional activity, service or other practice that national banking associations may engage in under federal law, subject to the Commissioner determining that the approval: (1) is reasonably required to protect the welfare of Maryland’s general economy and of banking institutions, or (2) is not detrimental to the public interest or to banking institutions. The approval must impose the same conditions that federal law requires of or permits to national banking associations.

Pursuant to the Wildcard, Commissioner Crouse issued the 1983 Ruling in which he allowed state-chartered banking institutions to elect the national banking association aggregate lending limit (12 U.S.C.A. §804, as implemented by 12 C.F.R. 32) (“Federal Limit”) instead of the Maryland limit. Specifically, Commissioner Crouse found that “... *the lending limits available to national banking associations in Title IV of Public Law 97-320 at Section 401*

(amending 12USC §84) will be enforced as the lending limits applicable to state banking institutions....In all respects these lending limits are available to state banking institutions in the same way that they apply and will apply by interpretation of the U.S. Comptroller of the Currency to national banking associations beginning on April 14, 1983.”

State-chartered banking institutions have relied on the 1983 Ruling since its issuance.

On June 21, 2012, the OCC issued its Interim Final Rule implementing Section 610 of Dodd-Frank. The Interim Final Rule amends the Federal Limit to include any credit exposure arising from a derivative transaction (defined as a contract, agreement, swap, warrant, note or option based on the value of any interest in, quantitative measure or occurrence relating to commodities, securities, currencies, interest or other rates, indices, or other assets) and securities financing transaction (defined as a repurchase agreement, reverse purchase agreement, securities lending transaction, or securities borrowing transaction) (collectively “Derivative-Securities Credit Exposure”).

Pursuant to Section 611 of Dodd Frank, effective January 21, 2013, federally-insured state-chartered banking institutions may engage in derivative transactions only if the Maryland Limit includes Derivative-Securities Credit Exposure.

Commissioner’s Statement

Under the authority given to him by Section 5-504 and in compliance with the requirements of Dodd Frank, the Commissioner states the following:

1. As required by Dodd-Frank, effective January 21, 2013, the Commissioner will broadly interpret the computation of total liabilities under Section 3-601(b) of the Maryland Limit to include Derivative-Securities Credit Exposure;
2. For the purposes of calculating the Derivative-Securities Credit Exposure for compliance with the Maryland Limit, the Commissioner will require state-chartered banking institutions to measure the Derivative-Securities Credit Exposure in accordance with and subject to the limitations and exemptions under the OCC’s Interim Final Rule, as amended by the final rule upon issuance;
3. The Commissioner will not consider loans and liabilities made or incurred before the effective date of this Ruling, that have become nonconforming solely as a result of this change to the Maryland Limit, to be violations of law during the existing contract term and any obligatory extension or renewal thereof. In the case of nonobligatory extensions or renewals thereof after the date of this Ruling, a state-chartered banking institution must use reasonable efforts to bring such loans or liabilities that have become nonconforming as a result of this Ruling into conformity by the time of contract extension or renewal thereof unless to do so would be inconsistent with safe and sound banking practices;
4. The Commissioner has determined that allowing state-chartered banking institutions to elect the Federal Limit as amended by the OCC regulations is reasonably required to protect the welfare of state-chartered banking institutions

and is not detrimental to the public interest or to banking institutions. Therefore, the Commissioner approves the future election by Maryland state-chartered banks of the Federal Limit as amended, to the same extent and subject to the same conditions as permitted for national banking associations;

5. The Commissioner will not permit state-chartered banking institutions to make simultaneous dual election. A state-chartered banking institution's election to follow either the Maryland Limit or Federal Limit shall apply to all of the institution's general lending practices and policies and all applicable activities by that institution. If an institution wishes to change its election after the date of this Ruling, the election change must be approved by the institution's Board of Directors, the approval must be documented in the Board's meeting minutes, and notification must be given to the Commissioner;
6. This Ruling supersedes all previously-issued Commissioner of Financial Regulation and State Bank Commissioner advisories, correspondence, and any other communication concerning state-chartered banking institutions' election of the Federal Limit; and
7. This Ruling supersedes previously-issued Advice of Counsel and Attorney General Interpretive Opinions concerning the Maryland Limit only to the extent that they expressly or impliedly exclude Derivative-Securities Credit Exposure, or otherwise contradict this Ruling.